



Centro Legal de la Raza

*Working for Justice
Strengthening Community
Since 1969*

April 24, 2019

Eric Berg, Deputy Chief of Research and Standards
Amalia Neidhardt, Senior Safety Engineer
Division of Occupational Safety and Health
Department of Industrial Relations

Sent by email

Dear Eric and Amalia:

On behalf of Centro Legal de la Raza, I write to provide the following comments to create a strong emergency standard to help protect outdoor workers from exposure to wildfire smoke.

Centro Legal de la Raza (Centro Legal) was founded in 1969 to provide culturally and linguistically appropriate legal aid services to low-income, predominantly Spanish-speaking residents of the San Francisco Bay Area. Centro Legal assists several thousand clients annually with support ranging from advice and referrals to full representation in court, in the areas of housing law, employment law, and immigration law. Through legal services clinics, community outreach, and legal representation, Centro Legal serves hundreds of low-wage workers each year, including many who come to us with occupational health and safety concerns. We have heard back from day laborers about the difficulty and dangers of working outdoors during recent wildfires.

We support the Division's usage of the Air Quality Index (AQI) for PM2.5 as the measurement to trigger this standard's applicability. We feel strongly that the AQI is the best measurement to use as the basis for application of this standard. We also appreciate the language requiring employers to check AQI before worker shifts and periodically since AQI can quickly rise above the threshold at any point during the day. It will be important for employers to understand their obligation in reviewing the AQI not only before workers start a shift but also throughout the day. Generally, the sections outlined in the standard set an important framework for a standard to include at minimum a requirement that employers identify harmful exposures, develop a communication plan, provide training, and control harmful exposures to employees.

We understand a great amount of work has gone into the analysis and drafting of this discussion draft. However, a main concern is the scope. We feel strongly that the threshold should be **AQI for PM2.5 of 101 or greater** as reported for the local area by the AirNow.gov website or other

local government measure, or any area in which the public health officer has declared that the smoke is creating an increased risk to public health and not 150.

A trigger at this level, rather than the higher AQI of 150, is needed because the AQI is based on protecting the general public who spend little time outdoors, not workers who are performing strenuous outdoor work for 8 or more hours a day, and therefore have greater exposures. In addition some workers are sensitive to wildfire smoke because they have asthma or other health conditions.

The standard should apply whenever the AQI for PM2.5 exceeds the threshold or a wildfire smoke advisory has been issued for the area. Workers should not have to suffer exposure if there is a delay either in issuing an advisory or posting current PM2.5 levels. Additionally, the phrase "there is a realistic possibility that employees may be exposed to wildfire smoke" is a concerning proposed requirement as it may be too difficult to enforce.

By changing the threshold to an AQI for PM2.5 of 101 or greater, other sections within the discussion draft will be greatly enhanced and better protect workers from the hazards related to exposure to wildfire smoke. This is particularly important when the AQI exceeds 101, workers must be trained by their employer on how to properly wear respirators. Training must be in a language and literacy level workers understand and can access. Training must also inform workers that it is their employer's responsibility to pay for respirators and replace when they become soiled, clogged or at the end of the 8 hour work shift, whichever comes first.

While changing the threshold to AQI for PM2.5 of 101 or greater is a main concern, we also support the other concerns outlined in the letter submitted by Worksafe, California Rural Legal Assistance Foundation, State Building and Construction Trades Council and the California Labor Federations in response to this discussion draft.

Thank you for all the work and analysis in preparing a discussion draft of the emergency standard to protect outdoor workers from exposure to wildfire smoke. We look forward to working with the agency and other stakeholders throughout this important process.

Sincerely,



Derek Schoonmaker
Workers' Rights Directing Attorney
Centro Legal de la Raza